

The Honorable Brian D. Lynch  
Chapter 7  
Hearing Date: August 26, 2017  
Hearing Time: 9:00 AM  
Hearing Location: Tacoma Federal Courthouse/  
Union Station  
Response Due: August 19, 2017

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

IN RE:

MICHAEL GRAY AND NICOLE LEE HART,  
Debtors.

MICHAEL GRAY AND NICOLE LEE HART,  
Plaintiffs,

v.

ZB, N.A. D/B/A ZIONS FIRST NATIONAL  
BANK, AND BAILEY & BUSEY, PLLC  
Defendants.

BK Case No. 16-41279- BDL

Chapter: 7

Adv, Pro. 16-04123

DECLARATION OF NICOLE HART IN  
SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT

I, Nicole Hart, hereby declare as follows:

1. I am a Plaintiff in the above-referenced adversary proceeding and I have personal knowledge concerning all information in this declaration.

2. My husband Michael Gray and I have two sons, then-aged six and seventeen, and we live in Kelso, Washington.

DECLARATION OF NICOLE HART IN SUPPORT OF  
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

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1           3.       We fell behind on truck payments to Zions First National Bank ("ZB"), and they  
2       repossessed our 2002 Dodge Dakota on August 31, 2010, and sold it at auction on September 21,  
3       2010, for \$3,500.

4           4.       Thereafter, ZB sued us for the deficiency balance and obtained a default judgment  
5       against us in the Superior Court of Cowlitz County, Washington (hereafter "the collection  
6       lawsuit") on June 22, 2012.

7           5.       At that time, I was working at Target in Kelso, Washington where I work full  
8       time as a cashier. My husband was on disability at the time and not working, so the prospect of  
9       my wages being garnished was devastating.

10          6.       My husband and I wanted to avoid garnishment, so we tried repeatedly to  
11       negotiate a settlement arrangement to stop the accumulating interest of 18.99% and pay off the  
12       debt.

13          7.       At one point, I agreed to borrow money from my 401(k) retirement account for a  
14       possible settlement offer of \$3,650.00 including the garnishments already taken.

15          8.       Unfortunately, ZB refused the settlement and proceeded to garnish 25 percent of  
16       my take-home pay beginning in July 2012 and continuing through the end of 2013 when we were  
17       finally able to enter a payment arrangement with ZB to end the garnishments with a monthly  
18       payment of \$100 to ZB beginning in January 2014.

19          9.       The payments later increased to \$150 in August 2014 after ZB demanded higher  
20       payments.

21          10.       After paying regularly for over a year and getting nowhere, my husband and I  
22       decided to seek help from a bankruptcy attorney.

1           11.     In March 2016, I do not recall ever getting personal process service of  
2 supplemental proceeding pleadings.

3           12.     On March 25, 2016, my husband and I filed for bankruptcy and, through our  
4 attorney, listed Zions Bank as one of our creditors.

5           13.     On May 24, 2016, four deputies of the Cowlitz County Sheriff's Department  
6 arrived at our home in multiple marked vehicles while I was away.

7           14.     My husband was at home with our six-year-old special needs child when my  
8 husband was arrested and placed into a squad car for over an hour until I arrived home.

9           15.     When I arrived, the sheriffs arrested me too, and told us that Child Protective  
10 Services would have to be called if we could not find anyone to watch our young son.

11           16.     During the ordeal of the arrests, our older son came home and could watch his  
12 younger brother, but since he was also a minor, he couldn't help us with bail or anything else.

13           17.     At that time, neither one of us had any idea why we were being arrested.  
14

15           18.     With nothing useful to tell either of our sons, we were taken to the Cowlitz  
16 County jail in Longview and detained.

17           19.     I endured an invasive pat-down and search that entailed the embarrassing removal  
18 of my false teeth and bra.

19           20.     As the night lengthened, we were put into holding cells at the jail as I tried to  
20 telephone friends and family for help with bail, despite having no information to offer them as to  
21 why we had been detained in the first place  
22

23           21.     Eventually I reached my father who made bail arrangements around 11:00 pm,  
24 but it was too late for the jail to release us that night. We were issued prison clothing and left to  
25 spend the night in holding cells alongside other detainees.  
26

27     DECLARATION OF NICOLE HART IN SUPPORT OF  
MOTION FOR PARTIAL SUMMARY JUDGMENT - 3

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1           22.     The experience was particularly awful since I was forced to sleep on the floor  
2 next to the toilet.

3           23.     I also fretted all night about in fear for my children and I had no idea what was  
4 coming next, and just cried myself to sleep.

5           24.     It was not until our arraignment hearing at 11:00 am the next morning that we  
6 finally learned that the repossession judgment from ZB led to our arrest, even though we had  
7 filed a bankruptcy.

8           25.     At this point, we called our bankruptcy attorney who appeared with us at the  
9 arraignment to obtain a continuance due to the bankruptcy filing. He also immediately contacted  
10 ZB's attorneys, Bailey & Busey, about the arrest

11           26.     Shortly thereafter, ZB quashed the bench warrant and we did not have to appear at  
12 the continued arraignment date.

13           27.     After the arrest, I was forced to tell my employer that I would not be at work the  
14 next day, and I had to share the humiliating details of my arrest with my boss at the Target  
15 department store, where I have worked for more than 121 years.

16           28.     Kelso is a small town, and my duties as a cashier at Target have repeatedly led me  
17 into direct contact with several of the sheriff's deputies and correctional officers who  
18 participated in my arrest and incarceration, which has been degrading and humiliating.

19           29.     When I see them at Target, there is no way I can explain that I am an upstanding  
20 member of society that was arrested wrongfully. I don't expect that they know the bench warrant  
21 was quashed or that the circumstances were for a civil debt owed to Zions Bank. The whole  
22 situation has been deeply traumatic.

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DECLARATION OF NICOLE HART IN SUPPORT OF  
MOTION FOR PARTIAL SUMMARY JUDGMENT - 4

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1           30.     My family has been turned upside down by these events. Our neighbors look at us  
2 like we are common criminals, and even if we tried to explain, they would never fully understand  
3 or appreciate that we were wrongfully arrested for a deficiency on a repossessed car.

4           31.     Since the event, I have endured several months of emotional trauma, stress, and  
5 worry, my husband and I sought help from legal counsel. I have also been seeing a counselor to  
6 help deal with issues resulting from the events.

7           32.     We also thought a lawyer could help us expunge the arrest records from public  
8 records, credit reporting agencies, and entities that perform employment background checks, as  
9 well as the fallout from other improper reporting in the era of social media.  
10

11          33.     Lastly, the severe trauma I experienced has affected our son and our marriage. I  
12 still relive the experience regularly and I have not gotten over the pain and sorrow of the  
13 experience.

14          34.     As for my son, we have always tried to instill respect for law enforcement in our  
15 children and teach them that police officers are their friends when they are in trouble. However,  
16 since this experience, he has developed an acute fear of the police and of men in uniform and it  
17 has been difficult for us to engage him in conversation with him about it. We fear the incident  
18 will have lasting effects.  
19

20 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
21 WASHINGTON THAT THE ABOVE IS TRUE AND CORRECT.  
22

23                 DATED this March 28, 2017

24                         /s/ Nicole Hart  
25                         Nicole Hart  
26

27     DECLARATION OF NICOLE HART IN SUPPORT OF  
MOTION FOR PARTIAL SUMMARY JUDGMENT - 5

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